

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-
01/18

Date: 02/13/2020

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács Title
Judge Marc Pierre Perrin de Brichambaut Title
Judge Reine Alapini-Gansou Title
Choose ICC Judge... Title
Choose ICC Judge... Title

SITUATION IN THE STATE OF PALESTINE

IN THE CASE OF
THE PROSECUTOR v.

Public Document

COURT'S TERRITORIAL JURISDICTION IN PALESTINE

Source: Dr. Frank Romano

No. ICC-
01/18

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Fatou Bensouda, James Stewart

Counsel for the Defence

[2 names per team maximum]

Legal Representatives of the Victims

Legal Representatives of the Applicants

[1 name per team maximum]

Unrepresented Victims

Unrepresented Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

[2 names maximum]

States' Representatives

Competent Authorities of the
State of Palestine

Competent Authorities of the
State of Israel

Amicus Curiae

REGISTRY

Registrar

M. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Other

Mrs. Fatou Bensouda

Prosecutor of the International Criminal
Court

REPORT / REQUEST

1. Dr. Frank Joseph Romano¹, former resident of the West Bank, citizen of France and the United States, on behalf of all Palestinians living in ALL the West Bank, notably in Area C, an administrative division of the West Bank, set out in the Oslo II.

**MY OBSERVATIONS CONCERNING THE
COURT'S TERRITORIAL JURISDICTION IN
PALESTINE.**

REPRESENTATION:

On account of the military occupation of Palestinian territories by Israel, the plaintiffs/applicants will be represented for the purposes of this procedure by Dr. Frank ROMANO, attorney at law, active member of the California Bar, United States (and inactive member of the Marseille, France). His present office address is 290 W. 12th Street, Apt. A, 10014 New York, NY and his email is: fromano696@gmail.com.

Consequently, all subsequent correspondence shall be sent only to the address and e-mail address given above. Any notification within the meaning of the Statute of the Court addressed in this way will be considered valid.

I. Introduction

In June 1967, an international armed conflict (the Six-Day War) broke out between Israel and neighboring states, as a result of which Israel acquired control over a number of territories including the West Bank and East Jerusalem. Immediately after the end of the Six-Day War, Israel established a military administration in the West Bank,

¹ Dr. Frank Romano is an independent petitioner, filing this request for an investigation on behalf of all Palestinians living in the West Bank. However, he was not officially hired by those Palestinians.

and adopted laws and orders effectively extending Israeli law, jurisdiction and administration over East Jerusalem. In November 1981, a separate Civilian Administration was established to “run all regional civil matters” in the West Bank (also herein the “OT,” or occupied territories). On 30 July 1980, the Knesset passed a ‘Basic Law’ by which it established the city of Jerusalem “complete and united” as the capital of Israel.

Pursuant to the Oslo Accords of 1993-1995, the Palestine Liberation Organization and the State of Israel formally recognized each other, and agreed on a progressive handover of certain Palestinian-populated areas in the West Bank to the Palestinian National Authority (or Palestinian Authority, “PA”). Under the 1995 Interim Agreement, the West Bank was divided into three administrative areas (Area A – full civil and security control by the PA; Area B – Palestinian civil control and joint Israeli-Palestinian security control; Area C – full civil and security control by Israel).

Israeli authorities have been involved in the demolition of Palestinian property and eviction of Palestinian residents from homes in the West Bank and East Jerusalem. Recently, between 1 August 2016 and 30 September 2017, according to figures published by the UN Office for the Coordination of Humanitarian Affairs (hereinafter: OCHA), Israeli authorities have confiscated and/or demolished 734 Palestinian-owned structures, including 180 residential inhabited structures, of which 48 were located in East Jerusalem. These demolitions and evictions reportedly resulted in the alleged displacement of 1,029 individuals, including 493 women and 529 children. Moreover, during the reporting period, Israeli authorities have reportedly continued to advance plans to relocate Bedouin and other herder communities present in and around the so-called E1 area, including through the seizure and demolition of residential properties and related infrastructure.²

In addition to allegations directly related to settlement activities, the UN Office has also received information regarding the purported establishment of an institutionalized regime of systematic discrimination that allegedly deprives Palestinians of a number of their fundamental human rights.

² Human Rights Voices, Israel, the International Criminal Court & Universal Jurisdiction, Palestinians Pursue War Criminal Charges at the ICC, (19 April 2019), http://www.humanrightsvoices.org/EYEontheUN/antisemitism/israel_and_icc/?l=104&p=2983&parent=2980.

II. Statement of Facts

General Facts

Mindful that the Rome Statute and Geneva Conventions were drafted so that the most serious crimes of concern to the international community as a whole do not go unpunished and that their effective prosecution be ensured, in view of the fact that such grave crimes threaten the peace, security and well-being of the world, it is evident that the jurisdiction of the Court is deemed to be part of the implementation of jus cogens—the highest standing in international legal norms. Thus, the protection afforded in relation to crimes against humanity and war crimes constitute non-derogable rules of international law. The implication of this standing is that these crimes are subject to universal jurisdiction, meaning that all States can exercise their jurisdiction in prosecuting a perpetrator irrespective of where the crime was committed.

It should be stressed that these crimes consist of the most barbaric atrocities and humiliations and fall outside the legitimate realm of sovereign self-determination. Crimes against humanity and war crimes assault the individuality by attacking a person solely because of the groups to which he/she belongs, and they assault sociability by transforming political communities into death traps for their members. Moreover, crimes against humanity are closely related to the crime of genocide, yet broader in scope, in that they encompass attacks on a wide range of civilian populations, whereas the crime of genocide is confined to national, ethnic, racial, or religious groups.

In the present case, which is brought to you so as to undergo the Court's duly investigation, it is evident – in view of the facts that have already been analyzed - that the Palestinian people have become the victims of such crimes.

They suffer a systematic attack directed against their civil and human rights, property, dignity, prosperity and well-being, which assume the form of the official Israeli policy, thus they are forced to absorb a series of violations in the name of rights to housing, security, education, etc.

Other than that, the Palestinian people have also been persecuted as a whole, given that the measures enforced upon them result in the severe deprivation of the enjoyment of several rights such as respect of human dignity, protection of property, protection of rights to security, to an education, guarantee of existence-minimum, which in total leads to the violent downgrading of the general level of human rights protection in the West Bank and East Jerusalem, forcing the majority of the population to live under derisory conditions.

The Secretary-General of the UN has voiced it was concerned by the deteriorating human rights and humanitarian situations in particular facing

Palestinians affected by home demolitions and Israeli plans for “relocation” of entire communities.³

The Secretary-General has previously noted the Israeli zoning and planning policy in the West Bank, which regulates the construction of housing and structures in Area C, is restrictive, discriminatory and incompatible with requirements under international law (see A/HRC/25/38, paras. 11-20). The planning system favors Israeli settlement interests over the needs of the protected population and makes it practically impossible for Palestinians living in Area C (approximately 300,000, according to the Office for the Coordination of Humanitarian Affairs) to obtain building permits. Severe restrictions on Palestinian planning in Area C further prevents the development of communities, which are effectively denied basic services and infrastructure under the current policy.

This policy is not arbitrary however, as it creates a self-fulfilling prophecy: the Israeli government endeavors to expand settlements (see below) into Palestinian land so it makes it easy for settlers to get permits but almost impossible for Palestinians to obtain one. Since Palestinians are obliged to build without permits, that gives Israeli government a pretext to destroy the buildings, transfer the people out, and replace them with settlements.

But the residents are not criminals: Israel denies them any way of obtaining construction permits and creates unbearable living conditions, hoping they leave - ostensibly of their own volition - so that it can take over their lands. Transferring communities is a war crime; no court ruling or military order can whitewash it.⁴

E-1 is a strip of land between Israeli-occupied Jerusalem and the vast Israeli colony-city of Ma'ale Adumim, along with a few smaller neighboring Jewish-only Israeli colonies such as Geva Binyamin (also known as Adam). E-1 now separates them from Jerusalem; what Israel wants is for E-1 to connect them.

Palestinians can still squeeze through this choke-hold separating the northern and southern West Bank, but once Israel fully commandeers E-1, the West Bank will be contiguous only for settlers. For Palestinians, it will be dissected into two parts. Politicians who can still enunciate “two state solution” with a straight face fret that E-1 may be the final nail in the two-state coffin; yet, as with everything that has happened over the past seven decades, they wring their hands in faux powerlessness to stop it.

³ See statement by the spokesperson for the Secretary-General, New York, (8 September 2015), <https://www.un.org/sg/en/content/highlight/2015-09-08.html>

⁴ B'Tselem, Facing Expulsion, (18 April 2019), https://www.btselem.org/facing_expulsion_blog?community=204521&nid.

That is why this complaint is brought before the ICC, perhaps the last possible hope for justice for the Palestinian people.

Indeed, it was because of the catastrophe of 1948, when the Zionist militias ethnically cleansed Bedouins from the Negev, that they subsequently settled in what is now called E-1, then under Jordanian occupation.

Among the people in E-1 who fled the 1948 Nakba, and whom Israel is now trying to erase again, are the Jahalin of Jabal al-Baba, Al Khan al Ahmar, and others from a myriad of Bedouin communities. For example, as if to rub salt into the Nakba wound, it was Nakba Day that Israel selected in 2016 to raze many of the village's homes in Al Jabal al-Baba, homes provided by a European Economic Community aid program. Ninety people, most of them children, were left homeless.⁵

This impossibility of building safely creates enormous pressure on communities, particularly those targeted for relocation, as they know that within the current system there is no long-term protection from demolition and destruction of their property, creating a coercive environment that effectively drives communities off the land they have inhabited for decades.

According to the Office for the Coordination of Humanitarian Affairs, in a decrease compared with last year's reporting period, between 1 November 2014 and 31 October 2015, Israeli authorities demolished 554 Palestinian structures in the West Bank, including East Jerusalem, of which 137 were residential, inhabited structures. These demolitions resulted in the displacement of 712 Palestinians, and affected the livelihoods of communities throughout the West Bank.⁶

During the previous year (1 November 2013 to 31 October 2014), the Office recorded demolitions of 628 Palestinian structures, which resulted in the displacement of 1,263 Palestinians.⁷

August 2015 saw the highest number of demolitions of Palestinian structures in a single month since June 2010, with some 140 Palestinian structures demolished and over 200 Palestinians displaced. The overwhelming majority of the demolitions were in Area C, mainly affecting already vulnerable Bedouin herding communities.

⁵ Silvia Boarini, The Electronic Intifada, (15 August 2016), <https://electronicintifada.net/content/eu-logo-no-shield-israels-bulldozers/17681>.

⁶ Twin Third World Network, Israeli Settlements at Root of Rights Violations in Palestine, (26 November 2016), <http://www.twn.my/twnf/2016/4354.htm>, citing Information from the Office for the Coordination of Humanitarian Affairs (unpublished), provided by correspondence dated 26 November 2015.

⁷ Ibid.

Israeli authorities are thus extremely involved in the demolition of Palestinian property and eviction of Palestinian residents from homes in the West Bank and East Jerusalem.

At the same time, activities by the Government of Israel aimed at relocation of Bedouins and herder communities have progressed. The planned relocation of the Bedouin and herder communities in Area C gives rise to serious concerns under international law. The Secretary-General reiterates concerns that the implementation of proposed relocations may amount to individual and mass forcible transfers.⁸

Except for temporary transfers for the security of the population or for imperative military reasons in the context of hostilities, forcible transfers violate human rights law and are prohibited under international humanitarian law. Under article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, the unlawful transfer of protected persons constitutes a grave breach of its provisions, and potentially incurs the individual criminal responsibility of officials engaged in forcible transfers. In addition, the transfer of Palestinian Bedouin communities would contravene the obligations of Israel under international human rights law, particularly regarding the rights to freedom of residence and to adequate housing (see A/67/372, para. 37, and A/HRC/24/30, para. 29).⁹

The exclusive motivation of Israel for confiscating Palestinian land is to extend the settlements, which are strategically set up¹⁰

Settlements are scattered across the West Bank in a way that makes a contiguous Palestinian state almost impossible, while in Jerusalem the Israeli government has built settlements around the city to consolidate control over it.

These “ring neighborhoods” are a set of major settlement blocs to the north, east and south of the Jerusalem, which Israel hopes to annex to its state.

The ring settlements have already effectively cut off the West Bank's north from the south, impeding the ability of Palestinians to travel between cities in a normal fashion.

⁸ Ibid.

⁹ Report of the Secretary-General (UN, A/HRC/31/43), Israeli settlements in the Occupied Palestinian

Territory, including East Jerusalem, and in the Occupied Syrian, Golan, (20 January 2016), <https://reliefweb.int/sites/reliefweb.int/files/resources/G1600802.pdf>.

¹⁰ Zena Tahhan, Al Jazeera News, Israel's settlements: 50 years of land theft explained, (November 21, 2017), <https://interactive.aljazeera.com/aje/2017/50-years-illegal-settlements/index.html>. This applies to the entire section.

The building of these Jewish settlements around the city was not random but rather tells of a deeper Israeli political aim.

After the 1967 war and the Israeli occupation of East Jerusalem, Teddy Kollek, the mayor of the contested city, said in 1968: “The object is to ensure that all of Jerusalem remains forever a part of Israel. If this city is to be our capital, then we have to make it an integral part of our country, and we need Jewish inhabitants to do that.”

Indeed, Israel formalized its annexation of the eastern half of the city in 1980 when it passed the Jerusalem Law, claiming that “Jerusalem, complete and united, is the capital of Israel”, in violation of international law, which states that the city should be administered by the UN for its importance to the three Abrahamic religions.

The purpose was to seal the fate of Jerusalem and thwart negotiations over the city in any future agreement.

The woman who first introduced the Jerusalem Law to the Israeli parliament, Geula Cohen, also believes that Israel could annex the entire West Bank “if Prime Minister Benjamin Netanyahu wills it”.

Israeli lawmakers are now making moves to annex three large settlement blocs in the occupied West Bank to the Israeli-defined boundaries of Jerusalem.

The so-called “Greater Jerusalem bill” would see the addition of 140,000 Jewish Israelis who live in these settlements to the population of Jerusalem, to ensure a Jewish majority in the city.¹¹

“The government will approve the Greater Jerusalem law that will strengthen the eternal capital Jerusalem - demographically and geographically,” Yoav Kish, the Knesset member (MK) who submitted the proposal for the bill, said on Twitter.¹²

In 2004, Israel began building the separation wall, which was meant to provide “security” for Israelis by dividing between the West Bank and Israel following the second Palestinian uprising in 2000.

Israel has however used the wall to annex more land to its borders and has built it around some of the largest settlements in the West Bank, placing them on the “Israeli side”.

¹¹ Al Jazeera News, How Israel is Judaizing East Jerusalem, (6 December 2017), <https://www.aljazeera.com/news/2017/12/israel-judaizing-east-jerusalem-171206102051198.html>.

¹² Zena Tahhan, Al Jazeera News, Israel's settlements: 50 years of land theft explained, (November 21, 2017), <https://interactive.aljazeera.com/aje/2017/50-years-illegal-settlements/index.html>.

Some 85 percent of the wall falls inside the West Bank, and not on the Green Line. Palestinians have therefore aptly described the wall as an “annexation wall”.

In 2009, the Jerusalem municipality adopted a master plan intended "to guide and outline the city's development in the next decades". The vision, as stated in the plan, is to create a ratio of 70 percent Israeli Jews to 30 percent Palestinians in the city.¹³

How settlements impact Palestinians¹⁴

Besides being built illegally on private and public Palestinian land, settlements impact the day-to-day life of Palestinians in many ways.

In 2016, the UN found that the economy of the occupied Palestinian territories would be twice as large if the 50-year occupation were lifted.

Israel's policies of occupation and settlement have come to be seen as a purposeful strategy of de-development to weaken resistance to military rule and thwart attempts to build a successful Palestinian state.

Theft of resources¹⁵

The settlements have only been able to thrive through severe economic exploitation of the occupied West Bank at the expense of the natives.

While the majority of the Palestinian population in the West Bank live in Areas A and B, the infrastructure upon which their livelihood depends either lies in or crosses into Area C.

Close to half of the Biet Owwa village lies in Area C and has been severely affected by the settlements, checkpoints and the separation wall surrounding it.¹⁶

The area encompasses the territory's water resources, most fertile pasture and agricultural land, as well as mining and mineral extraction resources and tourist sites.

Palestinian access to Area C, some 60 percent of the West Bank, is either completely prohibited or highly restricted, causing an annual loss of \$3.4bn to the economy.¹⁷

¹³ Ibid.

¹⁴ Ibid. This applies to the entire section.

¹⁵ Ibid. This applies to the entire section.

¹⁶ Ibid.

¹⁷ Ibid.

Jordan valley and dead sea¹⁸

The Jordan Valley and the northern part of the Dead Sea are the most fertile areas in the West Bank.

Some 40 percent of the dates produced in the occupied Jordan Valley settlements are exported by Israel to the European Union.

Israeli companies generate some \$3bn annually from the sale of Dead Sea minerals.

Annual Israeli revenue from the exploitation of Palestinian land and resources in these areas is estimated at about \$130 million.

Quarries and stone milling¹⁹

Since 1994, Israel has refused to issue new permits to Palestinian stone mining and quarrying companies - the largest Palestinian industry - while operating some 11 quarries for Israeli use.

Israel's virtual ban on Palestinian permits for quarries costs the Palestinian economy at least \$241 million per year.

About 75 percent of the production of Israeli-operated quarries in the occupied West Bank is used in Israel.

Agriculture²⁰

Palestinians are deprived of access to 85 percent of the grazing lands in the entire West Bank.

Only 21 percent of cultivable land is being utilized.

Restrictions by Israel on the importation of fertilizers add some \$28 million to the costs borne by producers.

Freedom of movement and the separation wall²¹

Israel uses various methods to hinder Palestinian movement in the West Bank for the protection of Israeli settlers.

¹⁸ Ibid. This applies to the entire section.

¹⁹ Ibid. This applies to the entire section.

²⁰ Ibid. This applies to the entire section.

²¹ Ibid. This applies to the entire section.

By the end of 2016, there were 572 obstacles to the free movement of Palestinians, including military checkpoints and roadblocks, in the occupied West Bank.

The separation wall has physically separated Palestinian communities from one another and added hours to otherwise short commutes.

Palestinians in certain areas must cross a checkpoint to enter and exit their villages.

Settler violence²²

Due to the close proximity of settlements to Palestinian homes, friction and violence between settlers and Palestinians is a near-daily reality.

In the first half of 2017, the UN documented 89 incidents in which Israeli settlers killed or injured Palestinians or damaged Palestinian property.

The main forms of violence by Israeli settlers include throwing stones at Palestinian homes and vehicles, physically assaulting Palestinians, uprooting or damaging olive trees, vandalizing property, or setting fire to agricultural lands.

In 2016, more than 1,500 Palestinian olive trees were damaged or uprooted by settlers, in addition to 2.5 million trees uprooted since 1967.

The overwhelming majority of complaints filed against settler violence pass without any punishment of the perpetrators.

The numerous examples below-- in the different sections of the legal evaluation, direct evidence of Large-Scale Destruction and/or Confiscation of Palestinian Property and The Widespread and Systematic Forcible Transfer of Palestinians, and other violations of International Human Rights Law — are only the “tip of the iceberg.” The destruction, confiscation and forcible transfer of Palestinians are, as set forth above, perpetrated mainly to allow the expansion of illegal Israeli settlements. The examples illustrated below of Israeli practices do not purport to include all the examples of those violations committed by Israeli Authorities, notably since, and as a consequence of, the 1967 war.

A. General Jurisdiction- The ICC has general jurisdiction over conflicts between Palestinians and Israelis in the West Bank

²²Ibid. This applies to the entire section.

On 1 January 2015, the Government of the State of Palestine lodged a declaration under article 12(3) of the Statute accepting the jurisdiction of the ICC over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014”. On 2 January 2015, the Government of the State of Palestine acceded to the Statute by depositing its instrument of accession with the UN Secretary-General. The Statute entered into force for the State of Palestine on 1 April 2015.

As such, the Court can generally only prosecute crimes committed on the territory of, or by nationals of, states parties, as well as crimes referred by the United Nations Security Council.

The question whether the West Bank is part of the territory of a state party, is discussed below.

Under the Rome Statute of the International Criminal Court, the widespread, unlawful destruction of property and “the deportation or transfer” of people in an occupied territory are war crimes. The ICC statute went into effect for Palestine on April 1, 2015. Separately, the Palestinian government had also lodged a declaration giving the ICC a mandate dating back to June 13, 2014, over serious crimes in Palestine. The ICC prosecutor, Fatou Bensouda, has opened a preliminary examination into potential serious crimes committed by all sides. Human Rights Watch has called on the ICC prosecutor to open a formal investigation into the situation, given strong evidence that serious crimes have been committed in Palestine since 2014.²³

This complaint against Mr. Netanyahu and Mr. Lieberman applies to the crimes committed during Mr. Netanyahu’s terms as prime minister (from March 31, 2009 to the present) and during Mr. Lieberman’s term as Minister of Defense (30 May 2016 – 16 November 2018). It targets their crimes that occurred following June 13, 2014, the day the State of Palestine accepted the jurisdiction of the ICC over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem”.

The complaint thus is justified in applying the Rome Statute of the ICC, against Netanyahu and Lieberman due to their involvement, including but not limited to their direct supervision of widespread, unlawful destruction of property and “the deportation or transfer” of people in an occupied territory

²³ Human Rights Watch, Israel: Army Demolishing West Bank Schools, (25 April 2018), <https://www.hrw.org/news/2018/04/25/israel-army-demolishing-west-bank-schools>.

which are war crimes and crimes against humanity.

ANY MENTION, however, OF CRIMES COMMITTED BY ISRAELI AUTHORITIES OCCURRING BEFORE June 13th, 2014, is included in this complaint as evidence manifesting the of Large-Scale, systematic Destruction and/or Confiscation of Palestinian Property and The Widespread and Systematic Forcible Transfer of Palestinians which continues through 2014 and afterwards, and is still ongoing to the day this complaint is filed before the ICC.

B. Subject-Matter Jurisdiction – “occupied territories,” not “disputed territories”

Israel is in total control of the “occupied territories” which are not “disputed territories,” thus the ICC court has jurisdiction.

The preliminary examination of the situation in Palestine raises specific challenges relating to both factual and legal determinations. In the latter respect, one has in particular to consider the possible challenges to the Court’s jurisdiction, and/or to the scope of any such jurisdiction.

A number of novel and/or complex legal issues have also arisen in relation to this analysis of crimes allegedly committed in the West Bank and East Jerusalem and during the 2014 Gaza conflict. In conducting the analysis, the Plaintiffs have sought to address key legal issues through an in-depth and thorough study of the applicable law and relevant commentary. Some of these issues are briefly highlighted below.

Israeli advocates have argued that it not engaged in the “occupation of the West Bank” but is involved in the West Bank which is “disputed territory.

With regard to the specific legal regime applicable to the situation in the West Bank, Israel again considers that the area should not be viewed as occupied territory but as a “disputed territory”, subject to competing claims, whose status will ultimately be resolved in the course of peace process negotiations.

For this reason, Israel has taken the position to reject the *de jure* application of the Geneva Conventions to the territory but to apply humanitarian provisions *de facto*. The Israeli government maintains that the status of the Palestinian territories is ambiguous, as there was no internationally recognized government in the territories prior to the 1967 war. The Israeli government argues that it took the territory from Jordan, which

had control of the West Bank and East Jerusalem between 1949 and 1967, while Egypt had control of the Gaza Strip.²⁴

On the other hand, intergovernmental and international judicial bodies have periodically made determinations that the West Bank, including East Jerusalem, has been occupied by Israel since 1967. These include the International Court of Justice (“ICJ”) in its 2004 Israeli Wall advisory opinion and the UN Security Council and General Assembly in various resolutions adopted over the past 50 years. On 23 December 2016, the UN Security Council adopted resolution 2334 which reaffirmed the occupied status of the West Bank, and explicitly condemned the “construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions”.²⁵

In addition, Israel regarding the West Bank as “disputed” territory and thus refutes the existence of a military occupation there, concludes that the Fourth Geneva Convention does not apply. But the UN, the International Committee of the Red Cross, the International Court of Justice, and the international community have all affirmed that it does.²⁶

The Hague Convention, 1907, article 42 includes the following definition of occupation:

Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

After the 1967 war, as noted below, the state of Israel placed the entire West Bank and East Jerusalem under the authority of its army, definitely hostile to Palestinians. In addition, Israel subsequently annexed East Jerusalem, without giving full citizenship rights to Palestinians living there. Israel therefore has engaged in the occupation

²⁴ Zena Tahhan, Al Jazeera News, Israel's settlements: 50 years of land theft explained, (November 21, 2017), <https://interactive.aljazeera.com/aje/2017/50-years-illegal-settlements/index.html>

²⁵ Feda Abdelhady-Nasser, Palestine at the UN, 14 November 2017 – Israeli Confiscation of Palestinian Land and Eviction of Civilians, (15 November 2017), <http://palestineun.org/14-november-2017-israeli-confiscation-of-palestinian-land-and-eviction-of-civilians/>.

²⁶ Zena Tahhan, Al Jazeera News, Israel's settlements: 50 years of land theft explained, (November 21, 2017), <https://interactive.aljazeera.com/aje/2017/50-years-illegal-settlements/index.html>.

of the entire West Bank and East Jerusalem since 1967.

As such, Israel indisputably has occupied the West Bank and East Jerusalem

The crux of the 4th Geneva Convention is to protect the civilian population, individually and collectively, who find themselves in the hands of a belligerent State or occupying Power of which they are not nationals *"at any given moment and in any manner whatsoever"* (Art. 4) and in *"all cases of partial or total occupation"* (Art. 2). Moreover, the status of the Palestinian territory, including Jerusalem, as "occupied" is indisputable, in accordance with the Hague Regulations of 1907, which states in Article 42 that, as stated above, *"Territory is considered occupied when it is actually placed under the authority of the hostile army."*

As such, there exists no valid argument that the West Bank is disputed land. The West Bank is thus "occupied" by the State of Israel. Israel, again, is in total control of the "occupied territories" which are not "disputed territories," and thus the ICC court has jurisdiction.

C. Subject-Matter Jurisdiction – The conflict between Palestine and Israel is an "international armed conflict" and thus International Humanitarian Law applies.

International Armed Conflicts (IACs) occur when one or more States resort to the use of armed force against another State. An armed conflict between a State and an international organization is also classified as an IAC. Wars of national liberation, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, are classified as IACs under certain conditions (See Article 1, paragraph 4, and Article 96, paragraph 3, of Additional Protocol I).²⁷

Under Article 1, paragraph 4 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977:

The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

²⁷ The International Committee of the Red Cross (ICRC), When does IHL apply? (13 August 2017), <https://blogs.icrc.org/ilot/2017/08/13/when-does-ihl-apply/>.

The Palestinians, as set forth in this complaint, are indisputably fighting against colonial domination and alien occupation and against a racist regime in the exercise of their right of self-determination.

The argument, expressed below, is that the conflict between Palestine and Israel is an international armed conflict as it stems from the 1967 international war, and that the international armed conflict has not ended. It also qualifies as an “international armed conflict,” under the Additional Protocol I above, in which the Palestinians are fighting colonial domination.

Section Conclusion

In light of the above, again, the **ICC HAS GENERAL and SUBJECT MATTER JURISDICTION OF ISRAELI ATROCITIES AGAINST PALESTINIANS IN THE WEST BANK AND IN EAST JERUSALEM.**

Dr. Frank Romano
 Attorney at Law
 Active Member of the California Bar, United States
 Inactive Member of the Marseille Bar, France
 c/o Alan Baxter
 290 W. 12th Street, Apt. A,
 10014 New York, NY, USA

February 13, 2020



Dr. Frank Romano
 on behalf of
 the People of Palestine (Notably the West Bank)

Dated this 02/13/2020

At New York, New York, USA

At [place, country]

Dr. Frank Romano
on behalf of

Dated this

At [place, country]